



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 15 2005

THE ASSISTANT SECRETARY

Thomas M. Jackson, Jr.
President
Virginia Board of Education
227 North Main Street
Hillsville, VA 24343

Dear President Jackson:

Thank you for the opportunity to review the proposed amendments to your State accountability plan. The information in this letter presents feedback from Department staff on each of Virginia's three amendment request submissions and reflects the *No Child Left Behind Act of 2001* (NCLB) and final U.S. Department of Education (ED) regulations.

Acceptable amendments

We have reviewed your request to amend the Virginia accountability plan that was fully approved on July 8, 2004, and found the following amendments acceptable:

- Graduation rate - Virginia requests that for purposes of calculating graduation rate, the standard number of years be determined by a student's individualized education plan (IEP) for a student with disabilities, and a limited English proficient (LEP) student's school-based LEP team.
- Inclusion of students with disabilities (SWD) - Virginia will use the "proxy method" (Option 1 in our guidance dated May 7, 2005) to take advantage of the Secretary's flexibility regarding calculating AYP for the students with disabilities subgroup for 2004-05. Virginia will calculate a proxy to determine the percentage of special education students that is equivalent to 2.0 percent of all students assessed. For this year only, this proxy will then be added to the percent of students with disabilities who are proficient. For any school or district that did not make AYP solely due to its students with disabilities subgroup, Virginia will use this adjusted percent proficient to reexamine if the school or district made AYP for the 2004-05 school year. In light of this new flexibility, Virginia will not pursue its request to count as proficient for accountability purposes achievement levels set by IEP teams for students 1 to 3 years below grade-level.
- Counting expedited test scores - Virginia requests to count in AYP determinations the test results from "expedited tests," a re-test given to students who miss the first test administration or fail it within a specified, narrow margin (375-399).

- Annual proficiency targets – Virginia requests to revise its annual measurable objectives for reading and mathematics to reflect an annual increase. While this request is acceptable, such adjustments should not be made annually.

Acceptable amendments with modifications

While several of Virginia's amendments are not acceptable as submitted, the State has considered additional alternatives to the amendments that would be acceptable as noted, below.

- New minimum group size - Virginia requests to change the minimum subgroup size at the division and state level to 50 students or 1 percent of the enrolled student population, whichever is greater. Neither statute nor regulations allow for a different n-size at the division versus the school level. Virginia may apply this group size to schools, and include a cap of 200.
- District identification - Virginia proposes to identify divisions as in need of improvement if they miss AYP for two consecutive years in the same subject by the same subgroup and across all grade spans. For the reasons noted in the section below, it is not acceptable to identify schools or districts in need of improvement based on the same subgroup missing AYP. Virginia may identify divisions as in need of improvement if they miss AYP for two consecutive years in the same subject across all grade spans.

Amendments that are not fully aligned with the regulations and statute

The following amendments do not comply with the statute or regulations and may not be included as part of the approved Virginia accountability plan.

- Identification based on same subgroup - Virginia requests to base school and district identification on the same subgroup missing AYP for two consecutive years in the same subject. As you know, there is flexibility to permit States to determine schools in need of improvement on the basis of not making AYP in the same subject for two consecutive years. This flexibility stems from other provisions in the statute that treat reading and mathematics independently—e.g., separate starting points and annual measurable objectives. These provisions recognize that student achievement in reading and mathematics in a State may be starting at very different points and thus the State would need to establish different trajectories to attain 100 percent proficiency. Concomitantly, it makes sense to permit a State to identify schools in need of improvement based on not making AYP for two years in each subject. Subgroups, on the other hand, are not treated differently in the statute and thus the statute does not support similar flexibility to identify schools in need of improvement on the basis of "same subgroup" performance for two consecutive years. Moreover, the proposal is inconsistent with the statute's accountability provisions, which require that each subgroup meet the State's annual objectives in each subject each year. The intent of school identification is not to lay blame on a particular group of students, as the 'same subgroup/same subject' proposal would do, but to identify the instructional and academic elements that need to be

improved. A school that is identified for improvement should look to specific instructional remedies in the subject, other indicator, or participation rate.

- Use of other academic indicator - Virginia requests to use additional indicators for 'safe harbor' only (graduation rate, science SOL or attendance). While applying 'safe harbor' is optional, statute and regulations require that the additional indicator be used in determining AYP.
- Targeting Choice and supplemental educational services (SES) - Virginia proposes to limit choice and SES only to students in the subgroups that miss AYP. The statute requires that choice and SES options are offered to all eligible students, not just those in the subgroups that miss AYP.
- Limited English Proficient (LEP) flexibility - Virginia requests to extend the assessment and inclusion flexibility for newly arrived LEP students to LEP students who have been in the US from one to three years. Current Department policy on this issue allows recently arrived LEP students one year before taking the reading assessment. During this year, recently arrived students must take the mathematics assessment and the English language proficiency assessment. A State may exclude the scores of recently arrived LEP students in reading and mathematics for determining AYP. As you may know, this summer the Department is bringing together experts in the field to more fully consider these issues and exchange information on LEP students and NCLB. Until the Department finishes reviewing this issue, the current policy will continue.
- Separate Starting Points - Virginia requests to establish individual starting points and annual measurable objectives for each subgroup as a way of implementing a growth model for determining AYP of schools and divisions. The starting points and annual measurable objectives in each reporting category would be based on actual student performance in each category for the prior three years. The Department has asked the assistance of experts in the field to analyze the potential use of growth models in determining AYP. Until the Department's review of this issue and its implications is complete, this request may not be approved.

Amendment under further consideration

The Department will contact you once it has reached a final decision regarding the following amendment:

- Order of Choice and SES offerings - Virginia requests to reverse the order in which Section 1116 sanctions are offered (offer supplemental educational services in year one of improvement and choice in year two).

You have incorporated the acceptable amendments, above, into an amended accountability workbook that my staff is currently reviewing. Upon satisfactory review, your plan will be approved and posted to the Department's website. Darla Marburger (Darla.Marburger@ed.gov)

or David Harmon (David.Harmon@ed.gov) can answer any questions you might have about the issues in this interim letter and how we can help you through this process. We hope this information will be useful to the Virginia Department of Education as it refines its accountability system to ensure that no child is left behind.

Sincerely,



Henry L. Johnson

cc: Governor Mark Warner
Dr. Jo Lynne DeMary, Superintendent of Public Instruction